

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRS RECOVERY, INC., a Virginia  
Corporation, and DALE MAYBERRY,

No. C 06-7093 CW

Plaintiffs,

ORDER DENYING  
DEFENDANTS' MOTION  
FOR A STAY PENDING  
APPEAL

v.

JOHN LAXTON, aka  
johnlaxton@gmail.com, et al.,

Defendants.

Defendants John Laxton and Northbay Real Estate move for a stay, pending resolution of their appeal before the Ninth Circuit, of the Court's injunction requiring them to initiate a transfer of the domain name rl.com to Richard Lau, an agent of Plaintiff CRS Recovery. Plaintiffs oppose the motion.

Rule 62(c) of the Federal Rules of Civil Procedure provides, "While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." The standard for granting a stay pending appeal is similar to that for

1 a preliminary injunction. Lopez v. Heckler, 713 F.2d 1432, 1435  
2 (9th Cir. 1983). Thus, a party seeking a stay must show either (1)  
3 a likelihood of success on the merits of its appeal and the  
4 possibility of irreparable harm, or (2) that serious questions  
5 regarding the merits exist and the balance of hardships tips  
6 sharply in its favor. See Lands Council v. McNair, 494 F.3d 771,  
7 775 (9th Cir. 2007). "These two alternatives are extremes of a  
8 single continuum in which the greater the relative hardship to the  
9 party seeking the [stay], the less probability of success must be  
10 shown." Id. (internal quotation marks omitted).

11 When ruling on a motion for a stay of a final judgment, the  
12 district court will already have ruled on the legal issue being  
13 appealed. When evaluating the movant's likelihood of success on  
14 the merits in this context, the court need not conclude that it is  
15 likely to be reversed on appeal in order to grant the stay.  
16 Strobel v. Morgan Stanley Dean Witter, 2007 WL 1238709, at \*1 (S.D.  
17 Cal.). Rather, it may grant the stay when it has ruled on "an  
18 admittedly difficult legal question and when the equities of the  
19 case suggest that the status quo should be maintained." Wash.  
20 Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841,  
21 844-45 (D.C. Cir. 1977).

22 No difficult legal questions are presented on Defendants'  
23 appeal. This was not a close case. Defendants' position relied  
24 primarily on their contention that Virginia law should apply to  
25 Plaintiffs' claims. Yet they articulated no specific interest that  
26 Virginia would have in applying its law to this case. Under the  
27 applicable governmental interest test, it was clear that California  
28 law should apply. As for the issue of liability under California

1 law, Defendants' primary defense was that Plaintiff Mayberry  
2 abandoned his right to rl.com. Yet they could point to no clear,  
3 unequivocal and decisive act constituting abandonment.

4 The equities of this case also fail to support a stay. In an  
5 earlier order, the Court stated that it was inclined to deny  
6 Defendants' motion, but under the condition that Plaintiffs would  
7 not be permitted to alienate rl.com pending resolution of  
8 Defendants' appeal. Defendants have not identified any specific  
9 harm, let alone irreparable harm, they would be likely to face  
10 under this arrangement. Although they would prefer that neither  
11 party be permitted use of the domain name, they have not  
12 demonstrated that Plaintiffs are likely to devalue rl.com, and  
13 there is no legitimate reason to eliminate all productive use of  
14 the domain name during the pendency of the appeal.

15 Because Defendants' appeal does not raise serious legal  
16 questions, and because the balance of hardships does not tip  
17 sharply in Defendants' favor, Defendants' motion for a stay (Docket  
18 No. 184) is DENIED. Defendants must comply with the Court's  
19 injunction (Docket No. 173) within ten days of the date of this  
20 order. If Defendants intend to seek a stay from the Ninth Circuit,  
21 they must do so within this period of time. Because Defendants  
22 have not submitted any evidence showing that they will be harmed by  
23 the transfer of rl.com to Plaintiffs, Plaintiffs are not required  
24 to post a bond.

25 The domain registrar eNom is authorized, pursuant to this  
26 order and the injunction, to transfer the registration of rl.com  
27 from Northbay Real Estate, Inc. to Richard Lau, and to permit  
28 Richard Lau to control the content of rl.com. Once the transfer to

Richard Lau is effected, eNom shall not transfer, suspend or otherwise modify the registration record until resolution of the appeal of this action.

IT IS SO ORDERED.

Dated: \_12/9/08\_\_



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CLAUDIA WILKEN  
United States District Judge